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ARGUMENT**Claim Status**

The Examiner rejected Claims 1-3, 7, 8, 10-14, 18, 19, 21, 25, 26 and 30-38. The remaining claims stand as objected to only.

Note that the Examiner made amendments to each of Claims 1, 8, 12 and 19 to recite, in each case, following the words "data reader" the additional clause "which is enabled to read data and process information from each sector of the compact disc." This Examiner's amendment was to improve clarity of the claims and was not intended to be responsive to a rejection. Since the Examiner has already entered these amendments, they are not repeated here.

The Examiner made a minor typographical error in transcribing Claim 1, line 4 in the phrase "such than" where this should read "such that." Claims 8, 12 and 19 also were similarly misrendered by the Examiner. Note that all these claims, as filed and as earlier are amended, correctly recite "such that".

The Examiner rejected Claims 1-38 under 35 USC §112, second paragraph as omitting an essential step. The Examiner stated the omitted step is "how the rendered incorrect control data accomplishes copy protecting a digital audio compact disk carrying audio data."

Further, Claims 1, 2, 7, 8, 11-13, 18, 19, 26 and 31-38 stand rejected under 35 USC §102 as anticipated by Stebbings.

Further, Claims 3, 10, 14, 21, 25 and 30 stand rejected under 35 USC §103 as unpatentable over Stebbings further in view of Maeda.

Examiner indicates allowable subject matter in objected-to Claims 4-6, 9, 15-17, 20, 22-24 and 27-29 and is thanked for this.

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35 USC §112 Rejection Traversed

The rejection under 35 USC §112 is traversed. The Examiner stated that the claims omitted an essential step, which is how the rendered incorrect control data accomplishes the copy protection. It is not seen why the issue of how this occurs is an essential step. Claim 1 recites in this context "rendering selected control data incorrect. . .whereas the incorrect data negatively effects the playability of the audio data in a data reader. . ." It is apparent that with the "control data incorrect" that any playback device reading that control data would inherently be confused and thereby be unable to read the associated audio data. The whole point of control data on a digital audio compact disc is to enable reading or use of the content (audio) data.

For instance one embodiment is explained in the application at page 2, "In a preferred embodiment, the data on the CD identifying the nature of the tracks incorrectly identifies each audio track as a data track." It is clear that if a track is misidentified, for instance what should be an audio track is read by the data reader (playback device) as being a data track, the data reader will not be able to properly render this data since it will treat it as data rather than audio, resulting in different subsequent processing and thereby resulting in the audio not being properly played back. As pointed out further on page 2, "In one embodiment of a method of the invention, the data encoded on the compact disc which has been rendered incorrect is navigation and/or timing data." Hence if this control data is incorrect, either the navigation amongst the portions of a disc or the playback timing will be confused, resulting in an inability to properly render the audio content as recited in Claim 1 and the other independent claims.

Therefore, the Examiner's statement that how this happens is an essential step seems to be first, well-explained in the specification, and second there is no reason why it should per se be recited in the claims in any additional detail.

MPEP §2172.01 is directed to the issue of unclaimed essential matter. The first paragraph of this section states "Such essential matter may include missing elements, steps or necessary structural cooperative relationships of elements described by the applicant(s) as necessary

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to practice the invention.” It is not seen where the present claims fall within this requirement or that of the following MPEP paragraph which states “In addition, a claim which fails to interrelate essential elements of the invention as defined by applicant(s) in the specification may be rejected under 35 USC §112, second paragraph for failure to point out and distinctly claim the invention.” Again, this is not the case since the invention in the specification is described in the same terms as in the relevant claims.

Thus it is respectfully requested that the Examiner reconsider this §112 rejection and withdraw same.

Stebbins Reference

The Examiner rejected each of the independent claims, citing Stebbins under §102(e) and pointed to Stebbins column 1, lines 3-11 and 38-46.

It is respectfully submitted that Stebbins does not meet the present claims. To quote from the passages of Stebbins relied upon by the Examiner beginning at column 19, line 3:

The present invention relates to a method/system of preventing unauthorized copying of data on data media, including CDs and DVDs. Generally, an authorized CD is designed to require decoding by an authorized disc player. The authorized CD includes certain information used by an authorized CD player for playing music. An authorized copy, formed or pressed CD, however, does not have the requisite encryption/decryption key(s) necessary for decoding. (Emphasis added.)

Continuing at Stebbins column 19, line 38:

According to the present invention, the standard Reed-Solomon decoding method or other acceptable method, for example, is used to remove the predetermined errors that are intentionally embedded on an original authorized CD from the audio. Thus, the predetermined errors are prevented from being transferred in the audio output from the CD player or DVD player, and the like. The predetermined errors are configured as an authorization and/or decryption key(s) or a component thereof.

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It is clear that in this case Stebbings is talking about a compliant or specially adapted disc (CD) player when he refers to an "authorized disc player." He also describes the authorized CDs which are the accompanying compliant CDs.

The special Stebbings CD player is shown in part in block diagram in Fig 10 and explained in Stebbings at column 20 beginning line 57:

The resulting data 21 containing predetermined errors is introduced into an authentication module 23 when disc 20 is inserted into a CD player 22 of the present invention. Authentication module 23 is generally disposed within CD player 22, . . . (Emphasis added.)

Therefore this is a special or compliant CD player having the special authentication module 23 as additional circuitry/software.

Continuing at Stebbings column 21, line 5:

As described in FIG. 12, the CD player 22 of the present invention includes a fraud detector 35.

There is further description of this at column 21, beginning line 36:

All of the above components illustrated in FIG. 12 generally comprise standard components and CD players, with the exception of the fraud detector module 35. The fraud detector module 35 comprises either a separate data processor, such as a standard microprocessor that performs the functions described herein. Alternatively, fraud detector module 35 may advantageously be implemented on the existing processing hardware currently existing in CD players. (Emphasis added.)

So this is clearly a proprietary CD player which in Fig. 12 has fraud detector module 35. By the way, it is not clear what the relationship is between the Stebbings devices in Figs. 10 and 12 except that both are compliant (special) CD players with in the first example in Fig 10 the additional authentication module 23, and in the second example in Fig. 12 the fraud detector module 35. In both cases these are specialized or compliant CD players with additional circuitry 23 or 35 not present in normal commercial CD players.

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This specialness of the CD player is emphasized in the characterization of same as quoted above at column 20, line 59 "a CD player 22 of the present invention." This is the compliant CD player shown in Fig. 10. This is repeated with regard to the Fig. 12 CD player at column 21, line 5 "As described in FIG. 12, the CD player 22 of the present invention. . .". Hence in both cases, the CD player is inventive (not standard) and is a special or compliant CD player with a added circuitry for purposes of authentication/fraud detection.

Moreover, Stebbings does not deal with the case of a compliant CD of his type being played in a non-compliant (standard) CD player. Of course, since Stebbings is concerned with a closed system with compliant CDs and compliant CD players this is not relevant to him. However, it is clear that in accordance with Stebbings a key element is that, see column 19, beginning line 19, "In the present invention, predetermined errors are intentionally embedded, in the data, and are used as a decryption key." Hence if such a compliant CD with the embedded predetermined errors is played on a standard player, the player would detect the errors and presumably not be able to play the resulting CD due to the presence of the errors. It is only when the compliant player detects the errors and uses them as a decryption key that play of the CD is possible. Hence, the Stebbings CDs are not suitable for play in any sort of non-compliant player or data reader. Of course, Stebbings does not deal with this expressly since that is not an issue given his focus on the compliant CDs and associated compliant CD player. In that sense, Stebbings is what is considered to be a "closed" system with special CDs and special CD players not able to operate with respectively conventional CD players or conventional CDs.

Present Invention

In contrast, the present invention is different. It does not require special players and does not require that the players not be able to play other types of non-protected CDs. Unlike the reliance on the compliant CD player in Stebbings, instead, the present anticopy approach relies on differences between standard CD players and standard data readers, both of which are conventional commercially available devices of standard type. The present approach relies on the difference between the standard CD players and standard data readers in that the players conventionally do not

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access certain CD sectors for instance, the lead in data. In contrast, the data readers (e.g., CD-ROM drives) being more sophisticated do read more sectors of the disc including the control sectors in the lead in area which contain the relevant copy protection data. Hence, unlike Stebbings which relies on the distinction between its compliant player and standard players, instead, in accordance with the present invention the distinction is made between the less sophisticated CD players and the more sophisticated data readers such as CD-ROM drives. Incorrect data present in sectors generally inaccessible to or not read by a standard player does not affect play on such a standard audio player. Thus, a legitimate audio CD even if copy protected in accordance with the invention bought by user can be played normally on an audio CD player. As noted in the specification at page 2, first full paragraph,

...the term 'data reader' is used to refer to all players and drives which are able to read data on the disc, for example, by extracting or otherwise accessing the data on the disc. Such players will include, therefore, CD-ROM drives.

There is an accompanying aspect pointed out in the same paragraph,

Generally, and as acknowledged above, a CD-ROM drive, for example, will not only be prevented from making a usable copy of a legitimate CD-DA, but it will generally be prevented from playing a legitimate CD-DA.

Note that normal audio players do not include sophisticated CD-ROM drives and hence have no copy capability. However, the incorrect data renders that same CD unplayable by the more sophisticated data reader which is a device of the type capable of copying same. Hence, the present invention is directed to exploiting the difference between two types of widely available, commercially available devices, one of which is the audio player, the second which is the data reader as characterized here and relies on the difference in their ability to read control data from certain portions of the CD. Since only the more sophisticated data reader can read the control and the data, and control data is in this case rendered incorrect on purpose, copying by the data reader is effectively prevented.

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§102 Rejection Traversed – Claims distinguish over Stebbings.

Therefore the Examiner's rejection is not consistent with the disclosure of Stebbings. The Examiner states in his action at page 5, first paragraph, in relevant part that:

Stebbing discloses that the selected control data being ignored by an audio player, such than an audio player is able to read the audio data [column 19, lines 3-11], . . .

This interpretation of Stebbings is, as pointed out above, not consistent with Stebbings. Stebbings has only two cases; the first is the compliant (authorized) disc being played on the authorized player which would result in the authorized player being able to play the audio data. The second is the compliant disc being played on a standard player in which case, due to the predetermined errors, the material would not be able to be played. In Stebbings, there is no ignoring of any control data since the compliant player does use any relevant control data for decryption purposes and a non-compliant player would be confused by the predetermined errors in same and not able to play the audio data at all. Hence this statement by the Examiner is not consistent with Stebbings.

The Examiner goes on in the same paragraph to say:

“. . .whereas the incorrect data negatively affects the playability of the audio data in a data reader, which is enabled to read data and process information from each sector of the compact disc [column 19, lines 3-11].”

The second part of this statement by the Examiner is also not consistent with Stebbings. The statement of course makes no mention of a data reader or any distinction between a CD player and a CD-ROM drive since Stebbings never mentions same. The description in Stebbings relates only to disc players. Moreover, it only relates to his compliant so-called “authorized” CD players. There is no indication in Stebbings whether his authorized player is able or not able to read and process data from each sector. In fact, Stebbings does not say exactly where on the CD his predetermined errors are introduced, whether they are in the audio content, lead in area, lead out area, etc. Presumably Stebbings is vague on this since it does not matter, because he would

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normally put these predetermined errors in the content portion. He would do this because his CD player apparently is not of a CD-ROM drive type and thus would only read the content type data here. However, it does not appear to matter one way or the other since Stebbings is only operating in the realm of compliant (authorized) players and he is only concerned with compliant players. The relevant data would be located only where the player can read same. Hence, the location of the data is of no particular importance to Stebbings so long as his authorized player can read it. He is not concerned with other types of players with differing capabilities.

Hence the Examiner mischaracterized Stebbings. Moreover, this mischaracterization goes to the distinctions between the present claims and the Stebbings disclosure.

Thus it is respectfully submitted that Claim 1 distinguishes over Stebbings and the rejection of Claim 1 should be withdrawn. Specifically, Claim 1 recites (as corrected to say "such that," see above) in pertinent part beginning in line 3:

...said selected control data being ignored by an audio player, such that an audio player is able to read the audio data, whereas the incorrect data negatively affects the playability of the audio data in a data reader. . .

As explained above, Stebbings fails to meet at least this aspect of Claim 1. First, Stebbings makes no distinction between audio players and data readers. He appears to deal only in the context of an audio player. Further, Stebbings only describes a compliant or specialized audio player having the added authentication or anti-fraud circuitry or function. No such modifications to a standard player are required in the context of the present invention which, of course, is of a significant technical difference and a commercial advantage.

Hence the rejection of Claim 1 is traversed and it is respectfully requested that it be withdrawn. Each of the other independent Claims 8, 12 and 19, which recite the same language distinguish over Stebbings for at least the same reason as Claim 1. It is requested that the rejection of independent Claims 8, 12 and 19 be reconsidered and withdrawn for at least the same reasons as pertain to Claim 1.

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Moreover, the remaining claims are dependent upon these base independent claims, and each of the dependent claims also is similarly allowable over Stebbings and the other references. Note that the Section 103 rejection pertains only to certain dependent claims which are allowable at least for their dependence upon Stebbings.

Conclusion

Therefore, it is requested that all pending Claims 1-38 be allowed. It is further requested that the Examiner note and correct the typographical error introduced into each of Claims 1, 8, 12 and 19 in the phrase "such than" and rectify same to read "such that." This is not an amendment but merely conforms to the claims as earlier filed and amended. If the Examiner so requests, applicant will submit claims in correct form.

If the Examiner intends to take action other than passing this case to issue, he is requested to telephone the undersigned at the number indicated below. The undersigned's is not the correspondence address for this case, but he is authorized by the assignee of this application to file this paper.

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In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket no.136922002700. However, the Commissioner is not authorized at this time to charge the cost of the issue fee to the Deposit Account.

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Respectfully submitted,

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